

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

GORDON TURNER,

*

Petitioner,

*

v.

*

Civ. Action No. 16-1881

Crim. Action No. 14-0342

UNITED STATES OF AMERICA,

*

Respondent.

*

* * * * *

MEMORANDUM OPINION

On December 16, 2014, Petitioner Gordon Turner (“Petitioner” or “Turner”) pled guilty to being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). (ECF No. 21.) During Petitioner’s sentencing hearing, this Court found that Petitioner had a prior Maryland conviction for resisting arrest that constituted a “crime of violence” and one prior conviction that constituted a “controlled substance offense” and accordingly his sentencing offense level increased by ten under United States Sentencing Guideline (U.S.S.G.) § 2K2.1(a)(2). Petitioner was then sentenced to a term of seventy (70) months imprisonment. (ECF No. 30.)

One year later, the Supreme Court in *Johnson v. United States*, __ U.S. __, 135 S. Ct. 2551 (2015) struck down the residual clause of the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e)(2)(B)(ii) as unconstitutionally vague. Petitioner subsequently filed a Motion to Vacate requesting re-sentencing in light of *Johnson*. (ECF No. 34.) Five days later, the Office of the Federal Public Defender (OFPD) also filed a motion on behalf of Petitioner

under 28 U.S.C. § 2255, arguing that because the “Career Offender” provision in the Sentencing Guidelines includes the identical residual clause as that struck down in *Johnson*, it is also void for vagueness. (ECF No. 36.)¹

In 2017, however, the Supreme Court held in *Beckles v. United States*, __ U.S. __, 137 S. Ct. 886 (2017) that the advisory guidelines were not subject to *Johnson* challenges. Subsequent to that decision, the OFPD informed Petitioner that in light of *Beckles* it would no longer be able to represent him. On September 18, 2017, the OFPD filed a Motion to Withdraw as Counsel (ECF No. 38), which this Court granted. (ECF No. 39.)

Pending before this Court are Petitioner’s Motions to Vacate Under 28 U.S.C. § 2255. (ECF Nos. 34, 36.) The parties’ submissions have been reviewed, and no hearing is necessary. *See* Local Rule 105.6 (D. Md. 2016). For the reasons stated herein, Petitioner’s Motions to Vacate Under 28 U.S.C. § 2255 (ECF No. 34, 36) are DENIED.

ANALYSIS

Petitioner’s only claim is that under *Johnson*, the residual clause that this Court applied while sentencing Petitioner is void for vagueness. Therefore, this Court must determine whether Petitioner’s resisting arrest conviction qualifies as a “crime of violence” under the remaining “enumerated offenses” clause or “force” clause of U.S.S.G § 4B1.2(a).

As the OFPD stated in its Motion to Withdraw as Counsel, however, in light of *Beckles* this argument is without merit. As the *Beckles* Court stated, “[b]ecause the advisory Sentencing Guidelines are not subject to a due process vagueness challenge, § 4B1.2(a)’s

¹ The OFPD filed a corrected Motion to Vacate (ECF No. 36) after initially filing a Motion to Vacate on the same grounds on behalf of Petitioner (ECF No. 35.) Accordingly, the OFPD’s first Motion (ECF No. 35) is MOOT.

residual clause is not void for vagueness.” 137 S. Ct. at 897. For this reason, Petitioner’s Motions to Vacate Under 28 U.S.C. § 2255 (ECF No. 34, 36) are DENIED.

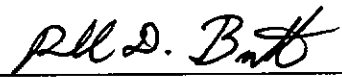
CONCLUSION

For the reason stated above, Petitioner Turner’s Motions to Vacate Under 28 U.S.C. § 2255 (ECF No. 34, 36) are DENIED.

Pursuant to Rule 11(a) of the Rules Governing Proceedings under 28 U.S.C. § 2255, the court is required to issue or deny a certificate of appealability when it enters a final order adverse to the applicant. A certificate of appealability is a “jurisdictional prerequisite” to an appeal from the court’s earlier order. *United States v. Hadden*, 475 F.3d 652, 659 (4th Cir. 2007). A certificate of appealability may issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Where the court denies petitioner’s motion on its merits, a petitioner satisfies this standard by demonstrating that reasonable jurists would find the court’s assessment of the constitutional claims debatable or wrong. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003). Because reasonable jurists would not find Turner’s claims debatable, a certificate of appealability is DENIED.

A separate Order follows.

Dated: May 11, 2018



Richard D. Bennett
United States District Judge